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FEDERAL COMMUNICATIONS COMMISSION
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THOMAS L. WELCH
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COMMISSIONERS

January 17, 2003

Marlene H. Dortch
Federal Communications Commission
Office of Secretary
C/o Vistronix Inc.
236 Massachusetts Avenue NE
Suite 110
Washington, DC 20002

77-21

Dear Ms. Dortch:

Please find enclosed an original and four copies of a Request for Review or Waiver of a decision of the School and Library Division of the Universal Service Administrative Company related to Year 2002 Federal E-Rate Application (Number 293451). If you have any questions about this filing, please contact:

Joanne Steneck, Esq.
Maine Public Utilities Commission
State House Station 18
Augusta, ME 04333
207-287-1390
Joanne.steneck@maine.gov or

J. Gary Nichols, Librarian
Maine State Library
State House Station 64
Augusta, ME 04333
207-287-5615
gary.Nichols@maine.gov

Sincerely,

Joanne Steneck
Joanne Steneck
General Counsel

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JS:lp
Enclosures

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JAN 17 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Request for Review or Waiver of)	File No. SLD – 293451
A Decision of the SLD by the)	
Maine State Library)	
(MSLN 2 Consortium - Billed Entity)	
Number 217380))	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association)	

REQUEST FOR REVIEW OR WAIVER

I. SUMMARY OF REQUEST

The Maine State Library and the Department of Education (Maine), acting as agent for approximately 950 of Maine's public schools and libraries, requests the FCC to review, pursuant to 47 C.F.R. § 54,719(c), the decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company that Maine submitted its Block 6 Certification and Item 21 documents associated with its Year 2002 Federal E-Rate Application (Number 293451) outside the Year 2002 window. Maine requests the FCC to find the documents were timely filed on January 17, 2002. In the alternative, Maine requests the FCC waive its rules (47 C.F.R. §§54,504(c), 54,507(g)) and consider Maine's Application as filed within the window. Maine makes these requests based on the fact that it delivered the documents to Federal Express shortly after 6:00 p.m. on January 17, 2002, (as evidenced by the label on the package) and Maine's

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expectation that such delivery would result in the package being processed prior to the January 17, 2002 11:59 p.m. deadline. Maine filed documents so close to the deadline because of the difficulties in filing a consortium application on-line due to SLD's poorly designed system for large filers and SLD's delays in approving Maine's Year 2001 application.

II. BACKGROUND

The Maine State Library, acting as agent for virtually all of Maine's public schools and libraries, filed Federal E-Rate applications as the MSLN 2 Consortium for discounts for Internet access and telecommunications services for both funding years 2001 and 2002. If fully funded, the applications provide approximately \$3 million annually, which is supplemented by additional awards from Maine's "State E-Rate" program. SLD awarded funds for the Year 2001 on May 31, 2002. No explanation was provided as to why it took over 16 months to approve the application. This resulted in Maine having to reenter all individual school and library identifying information when it filed its Year 2002 application in January 2002, as the Year 2001 application had not yet been acted upon. This was extremely time consuming, particularly since Maine's Administrator responsible for filing the application (Edna Comstock) was also answering SLD questions about the 2001 application during that same period of time. (See Attachment 1, Affidavit of Edna Cornstock.) It also meant that Maine's Administrator could not file a Block 6 Certification electronically, although authorized to do so. SLD requires that the person authorized to sign must have

previously signed a Form 486. Since the Year 2001 application had not been funded, she was not yet qualified for electronic certification

Maine's Administrator experienced significant difficulties in submitting the Consortium application on-line. This included (1) delays while working with the Block 4 section because it could not be organized to facilitate recall of entity numbers and/or entity names: (2) delays when entering a new entity or revising some part of an entity's data because the program returned to the very first entry after every addition or change, forcing the filer to spend considerable time scrolling back to the place where the next entry should be added; and (3) difficulties in staying connected during the filing window for the Year 2002. Large filers were "timed out" so quickly that they would not have been able to finish the application process before the close of the window if some correction had not been made to SLD's website. These time out difficulties were eventually addressed when SLD opened an alternate site where large application filers could maintain a steady connection. Valuable time was lost before the alternate site became available and contributed to pushing Maine closer to the filing window deadline.

The Administrator filed all parts of the application that could be filed electronically on January 17, 2002 around 5:00 p.m. The Administrator also prepared the Block 6 Certification page along with the Item **21** documents and delivered them to the local Federal Express office in Augusta, Maine shortly after 6:00 p.m. on January 17, 2002. The Federal Express box outside the office stated "normal pickup time 6:00 p.m." Federal Express workers could be seen in

the building and the Administrator assumed that the package would be processed that night. The label she affixed to the package indicated a date of January 17, 2002, a copy of which she kept as evidence that documents had been submitted on January 17 (See Attachment 2).

Maine received no information about its application until October 2002 when Maine's Administrator checked the new feature that allowed applicants to check the status of their application on SLD's website. The website indicated that the Year 2002 application had been "successfully data entered." On December 2, 2002, Maine received a postcard from SLD (dated November 22, 2002) stating that the application had been filed outside of the "window." A call to SLD revealed that Federal Express had not processed the package until the next day, January 18, 2002. The envelope on file with SLD shows that Federal Express covered the January 17 label with another label dated January 18.

111. **REQUEST FOR REVIEW**

Maine requests that the FCC review the decision of the SLD and determine that the original label dated January 17, 2002, along with the affidavit from the Administrator, are adequate evidence of timely filing. Maine's Administrator was aware of the January 17, 2002 11:59 p.m. deadline and believed she had complied with the deadline by delivering to Federal Express on January 17, 2002 the items that could not be submitted electronically. Maine's Administrator believed that preserving a copy of the Federal Express label indicating a ship date of December 17, 2002 would be "proof of mailing." The

Minimum Processing Standards and Filing Request state "you are advised to keep proof of the mailing date" but they do not further define what constitutes such proof.' She further viewed the "shipping date" indication on the label and the postmark date to be synonymous. See Attachment 1, Edna Comstock Affidavit.

IV. REQUEST FOR WAIVER

As an alternative to granting review, Maine requests the FCC waive its rules and consider the application as timely filed within the window, due to extenuating circumstances requiring delivery on the last day for submissions and the public interest served by such waiver.

The Commission requires a showing of good cause in order to waive a deadline (*See* 47 C.F.R. § 1.3). Further, a deviation is not permitted unless special circumstances warrant it and *the* deviation better serves the public interest than strict adherence to the general rule.' The Commission has repeatedly stated that due to the large number of applications it is necessary to place the burden on applicants to comply with Commission rules and procedures and that timely submission is needed so that all applications can be considered

¹ FCC Form 471 Instructions November 2001, Page 6.

² *Northeast Cellular Telephone Co. v. FCC*, 897 F2d 1164, 1166 (D.C. Cir. 1990).

together to allow the proper allocation of funds pursuant to the Commission's funding priorities.³ Maine's request satisfies all these tests.

This is not a situation where a filer did not understand the rules. As described above, the Administrator delivered the Block 6 and Section 21 documents to Federal Express before the deadline. The difficulties presented by submitting a large application to SLD prevented her from submitting the application sooner. Good cause exists to grant a waiver.

First, there was no prejudice to SLD in Maine submitting its Certification and Section 21 documents to Federal Express around 6:00 p.m. on January 17. The substance of the filing was submitted on time. If the pages had been postmarked at the post office on January 17, they would have been timely filed and surely would have been received no earlier than January 19, 2001 when Maine's delivery was received by SLD. SLD was not presented with the problem of not being able to consider all applications together. In fact, the SLD proceeded to process the application, as noted above.⁴

Second, the public interest will be served by allowing this application to be considered. Consortium applications, such as Maine's, have the potential to

³ See *e.g.*, Request for Waiver Tripp County Library, Federal-State Joint Board on Universal Service, Changes to Board of Directors of the National Exchange Carrier Association Inc. File No. SLD 326824, CC Docket Nos. 96-45 and 97-21, Order DA 02-3061 (Wireless Competition Bureau 2002) ¶ 4;

⁴ We also note that for the first time, the Year 2002 filing **required** the Block 6 and Item 21 documents be filed by the filing deadline. In previous years they could be filed after the deadline. We further note that for the Year 2003 Application, Item 21 documents can now be filed after the deadline. Apart from the confusion such changes may cause filers, it appears there is no harm to

reduce the workload of the SLD. Rather than receive 950 individual applications from Maine, Maine files one bid (Form 470) and one Form 471 for all schools and libraries. This also allows Maine to enjoy the benefits of economies of scale in going out to bid for a larger service offering and receiving a number of bids at very reasonable pricing for these services.

Unfortunately, the SLD processes and on-line filing systems were not designed with large applications in mind. As a result, consortium applications such as Maine's, have taken much longer to file (and process). Maine recognizes that the Commission has previously stated that the burden is on consortium filers to realize that such filings may be more complex and time consuming to file.⁵ However, the delays caused by the electronic filing system not being designed for filers with multiple entities in their applications could not have been anticipated. Maine filed electronically all parts of the Form 471 that it was permitted to file electronically. However, Maine's Administrator was ineligible to file the Block Certification because SLD it had not yet acted on Maine's Year 2001 application. Further, the difficulties of entering a multiple entry application created a situation where the data entry was nearly impossible to complete on time. When Year 2003 filers recently experienced difficulty filling new forms on-line, SLD responded by extending the filing window by three weeks

SLD's processes if either of these items arrive after the deadline, as its rules have allowed such filing at various times.

⁵ *Request for Review by Information Technology Department State of North Dakota, Federal-State Joint Board on Universal Service, Changes to Board of Directors of the National Exchange Carrier Association Inc.* File No. SLD 245592, CC Docket Nos. 96-45 and 97-21, Order DA02-956 (Wireless Competition Bureau 2002) ¶ 11; Footnote 36.

(See www.sl.universalservice.org/whatsnew/122002.asp). No such extensions were made in 2002.

The situation faced by Maine is similar to those considered by the Commission in granting other waivers of the filing window deadline. When the SLD's actions resulted in a filer filing its Form 471's outside the window, the Commission found a waiver was warranted.⁶ Likewise, the Commission found that SLD's excessive delay in notifying a filer about a missing signature, thus adversely affecting the filer's subsequent Form 471 filing, resulted in good cause to grant a waiver.⁷

The cumbersome process for entering consortium applications led to Maine's making its filing on the last day. The SLD delays in processing Maine Year 2001 application similarly led to Maine's having to enter additional data and file a hard copy of its certificate page, as well as answering questions about the 2001 application while attempting to file its 2002 application. These actions by SLD resulted in Maine's filing on the last possible day and warrant a waiver of the window for the Year 2002 application, particularly since the one-day delay created by depositing the documents at Federal Express during the evening of

⁶ Request for Waiver by Council Bluffs Community Schools, Federal-State Joint Board on Universal Service, Changes to Board of Directors of the National Exchange Carrier Association *Inc.* File No. E007282, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 18,836 (Com. Car. Bureau 2000).

⁷ Request for Waiver by *Lettie W.*Jensen Library, Federal-State Joint Board on Universal Service, Changes to Board of Directors of the National Exchange Carrier Association *Inc.* File No. SLD 267950, CC Docket Nos. 96-45 and 97-21, Order DA01-2401 (Com. Car. Bureau 2001).

January 17, 2001, caused no delay or inconvenience to SLD's consideration of Maine's application.

V. CONCLUSION

Maine believes it timely filed its **Form 471** and that *the* Commission **should** take into consideration both the **fact** that it **delivered** its **Block 6** Certification and **Item 21 documents** to Federal **Express** prior **to the** deadline and **that** the SLD process for consortium applications resulted in difficulties in Maine being able to make its filing **earlier than** January 17, 2002. Therefore, Maine requests that *the* Commission either determine that Maine's Block 6 Certificate and **Item 21** documents were timely filed on January 17, 2002 or grant a waiver as in the public interest based on extenuating circumstances surrounding the data entry difficulties for large filers and delays in approving Maine's Year 2001 application

Dated: January 17, 2003

Respectfully submitted,

MAINE STATE LIBRARY



J. Gary Nichols

Maine State Librarian
64 State House Station
Augusta, **ME** 04333
Phone: 287-5603
Fax: 287-5615
Gafy.Nichols@rname.gov
Billed Entity # 217380
MSNL2-2002

Attachment 1 - Edna Cornstock Affidavit
Attachment **2** - Federal Express Label

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:

Request for Review or Waiver of)	File No. SLD – 293451
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)	
Changes to the Board of Directors of the)		CC Docket No. 97-21
National Exchange Carrier Association)		

AFFIDAVIT OF EDNA COMSTOCK

- 1 I, Edna Comstock, was the authorized filer of the MSLN2 Consortium's Year 2002 application (Form 471 # 293451) for telecommunications and Internet service, delivered to all schools and libraries in Maine. I began the electronic filing process in early November of 2001 right after the 471 window opened.
- 2 I planned to base Application #293451 on MSLN2's successful Year 2001(first year) application which should have involved editing the electronic records already available from that previous year. Those records were not available because SLD had not yet completed the data entry process (Receipt Acknowledgement Letter for Year 2001 was not sent until February 4, 2002).
3. Instead I had to reenter each site listing in a process that was time-consuming and very inefficient for consortium filings. I also experienced difficulties staying connected to the electronic application site as did other large/consortium filers in the Year 2002. These difficulties were eventually addressed by the opening of an alternate site where large application filers could maintain their connections. However, the lack of that site early in the process contributed to the delay in the MSLN2 filing for Year 2002.

4. I was taken from the 2002 filing process to provide answers to requests for additional data for the Year 2001 application because of the considerable delay in the processing of MSLN2's Year 2001 application (noted above). (Requests for such information come with a seven-day deadline.) Requests during the 471 window were made on November 5, 2001, December 31, 2001, January 3, 2002 and again on January 16, 2002. They involved schools and libraries that had closed, changed their names, come into existence and/or failed to notify SLD and MSLN of pertinent changes to the status during the intervening year since the Year 2001 application was filed. Such problems are exacerbated when an application is not reviewed until a year after its filing. These requests further delayed the 2002 filing process.
5. I was concerned that many of the Year 2001 data issues, because they were not resolved before the 2002 process began, required additional changes during the 2002 process which again delayed completion of the application and added to the confusion of trying to keep applicable data straight between the years (i.e. If a school was closing, it might be open for Year 2001 but closed in Year 2002).
6. I experienced a lack of timely response and/or incorrect responses on the part of SLD regarding entity number issues for the 2001 application which also contributed to the slowdown of filing near the end of the cycle. An examination of Client Service Bureau logs should be able to verify that several Maine sites were inappropriately assigned or unassigned entity numbers (mostly related to name changes and closings or merging of facilities) and that some of those issues were not resolved before the filing window closed.
7. I was also concerned time-wise because the electronic application containing those sites had to be corrected before being entered rather than after as it would have been in a manual filing. In several cases we had worked out the correction only to find that it had been undone again by someone else at CSB which necessitated additional calls. On January 17, 2002 when some of these problems had still not been resolved, I filed the application without those 10-15 sites because waiting would have been an automatic default on the timeframe. (I know of no extension process that can be invoked in this instance and inquired about such a process when I made my last call before submitting the application. The Client Service Bureau representative I spoke with indicated that there was no extension process.)
8. I submitted the electronic application at about 5pm on January 17, 2002 after printing all pages of the application. I then photocopied the Block 6 document for my records and added it to the package with the Item 21 document we had prepared that day for delivery to FedEx. I delivered the

package to the Fed Ex Office Drop Box shortly after 6pm and observing people still at work there, assumed that the package would be taken care of before the 11:59pm deadline. The box stated normal pick up time was 6:00pm. (Any previous experience with such drops indicated to me that nothing more was required.) I kept a copy of the Federal Express label on the package. I assumed that the skip date on the label would be considered the postmark date.

9. I did not become alarmed that we received no RAL letter because that had been my experience with the Year 2001 application. However, I did avail myself of the SLD's new 471 retrieval tool when it became available in the Fall of 2002. Using that tool I located Application # 293451 on 10/9/2002 and noted that it was listed as certified (The definition given on the site indicated that 'Certified' means that "Form 471 (whether electronic or paper), has been successfully data entered."
10. Beginning in November 2001, I raised difficulties with the 2002 Application process for large filers during the National Library Association's ERTF biweekly conference calls and during the ERTF Taskforce Retreat with SLD and the FCC in February of 2002.)

I declare under penalty of perjury that the foregoing is true and correct.

Dated at Augusta, Maine this 16th day of January, 2003.

By Edna Cornstock
Edna Cornstock

Edna Cornstock personally appeared before me and known to be the person she represents herself to be, who by being duly sworn, did make the foregoing affidavit.

Augusta, Maine

Subscribed and sworn to before me this 16th day of January 2003

Jennifer Paul

JENNIFER PAUL
NOTARY PUBLIC - MAINE
MY COMMISSION EXPIRES JUNE 21, 2007

PLEASE FOLD THIS SHIPPING DOCUMENT IN HALF AND PLACE IT IN A WAYBILL POUCH AFFIXED TO YOUR SHIPMENT SO THAT THE BARCODE PORTION OF THE LABEL CAN BE READ AND SCANNED.
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FROM: Cheryl Ramsay (207)287-5620

Maine State Library
64 State House Station

Augusta, ME 043330064

SHIPPER'S FEDEX ACCOUNT NUMBER



TO: SLD-Form 471 (888)203-8100
c/o Ms. Smith
3333 Greenway Drive

SHIP DATE: 17JAN02
MAN-WGT: 1 LBS

Lawrence, KS 66046-

REF:



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